

**MAR 15 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

WILLIE CLIFTON CARTER,

Petitioner - Appellant,

v.

MICHAEL BUDGE; et al.,

Respondents - Appellees.

No. 04-15378

D.C. No. CV-01-00686-DWH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
David Warner Hagen, District Judge, Presiding

Submitted March 8, 2006<sup>\*\*</sup>

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Nevada state prisoner Willie Clifton Carter appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition challenging

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his 1998 jury conviction for second degree murder. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Carter contends that the district court should have offered him the opportunity to stay his mixed habeas petition so that he could return to state court to exhaust his unexhausted claims. We review for abuse of discretion the district court's decision to grant or deny a "stay and abeyance" of a habeas petition. *See Rhines v. Weber*, 544 U.S. 269, 125 S. Ct. 1528, 1534-35 (2005).

No abuse of discretion occurred here. After determining that Carter's habeas petition was mixed, the district court gave him the opportunity to exercise his options under *Rose v. Lundy*, 455 U.S. 509, 510 (1982), and offered Carter an administrative closure procedure that was the equivalent of a stay and abeyance. Carter rejected that procedure and knowingly and voluntarily elected to amend his habeas petition so that it presented only exhausted claims to the district court.

**AFFIRMED.**